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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

First Named Appellant: Domel)	Art Unit: 3634
)	
Serial No.: 10/062,655)	Examiner: Johnson
)	
Filed: February 1, 2002)	1006.023
)	
For: OPERATING SIGNAL SYSTEM AND METHOD)	July 12, 2005
FOR CONTROLLING A MOTORIZED WINDOW)	750 B STREET, Suite 3120
COVERING)	San Diego, CA 92101
)	

SUPPLEMENTAL APPEAL BRIEF

Commissioner of Patents and Trademarks
 Washington, DC 20231

Dear Sir:

The appeal is reinstated in response to the Office Action dated June 28, 2005, which responded to an RCE filed solely to have two European references considered, which they now have been. Appeal fees have been paid previously.

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(1) Real Party in Interest

The real party in interest is Harmonic Design, Inc.

(2) Related Appeals/Interferences

No other appeals or interferences exist which relate to the present application or appeal.

(3) Status of Claims

Claims 1-20 are pending and finally rejected, which rejections are hereby appealed.

(4) Status of Amendments

No amendments are outstanding.

(5) Concise Explanation of Subject Matter in Each Independent Claim, with Page and Figure Nos.

As an initial matter, it is noted that according to the Patent Office, the concise explanations under this section are for Board convenience, and do not supersede what the claims actually state, 69 Fed. Reg. 155 (August 2004), see page 49976. Accordingly, nothing in this Section should be construed as an estoppel that limits the actual claim language.

Claim 1 recites a motorized window covering (14, figure 1, page 3, lines 17-21) that includes a remote control unit (34, figure 1, page 4, line 21) with a transmitter (202, figure 4, page 10, line 20), and an actuator (10, supra) coupled to the window covering. The actuator includes a receiver (204/205, page 10,

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line 22) for receiving at least one signal from the transmitter. A wake-up signal amplifier (208, figure 4, page 10, lines 26-28) is electrically connected to the receiver for receiving a wake-up signal having a first frequency, and a data signal amplifier (206, id.) is electrically connected to the receiver for receiving a data signal having a second frequency different than the first frequency, with the data signal carrying information for moving the window covering.

Claim 7 sets forth a method for controlling a motorized window covering (14, supra) that includes deactivating a data signal amplifier (206, supra) and activating a wake-up signal amplifier (208, supra). The method also includes activating the data signal amplifier to process a data signal to move the window covering only in response to a wake-up signal being received by the wake-up signal amplifier, with the wake up signal having a first frequency and the data signal having a second frequency different from the first frequency.

Claim 12 recites a system for controlling a motorized window covering (14, supra) that includes an actuator (10, supra) that is mechanically coupled to an operator (12, figure 1, page 3, line 18) of the window covering. A receiver (204/205, supra) is within the actuator, and a wake-up signal amplifier (208, supra) is electrically connected to the receiver for receiving a wake-up signal having a first frequency. Also, a data signal amplifier (206, supra) is electrically connected to the receiver for receiving a data signal having a second frequency different than the first frequency. The data signal carries information for moving the window covering. A processor within the actuator includes a program for controlling the actuator in response to at least one data signal (logic in figure 5).

(6) Grounds of Rejection to be Reviewed on Appeal

Claims 1-20 have been rejected under 35 U.S.C. §103 as being obvious in light of van Dinteren et al. in view of Buccola.

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(7) Argument

All pending claims (1-20) have been rejected as being unpatentable over van Dinteren et al. in view of Buccola. In marked contrast to the present claims, the primary reference uses only a single data signal to undertake both a wake-up function and a command function, col. 5, lines 50-53, indicating that the signal used by the Schmitt trigger to wake up the circuit is the "first or second signal" referred to at col. 5, lines 4-15 as clearly being the data signal itself. Accordingly, van Dinteren et al. neither teaches nor suggests the use of using a wake-up signal that has a different frequency than the data signal and that as a consequence affords the advantages noted in the present specification on page 11.

Buccola has been used to remedy the above shortfall. The combination of Buccola with the primary reference is improper on two easily understood grounds. First, Buccola is drawn to door locks; the door lock art is not analogous to the window covering art of the present claims. No evidence has been adduced of record that the artisan skilled in the window covering art would logically look to the door lock art, MPEP §2141. Note that the present claims do not presume to cover "power saving methods and systems" generally, but rather are specifically directed to the art of window coverings. It would be difficult at best to advance the argument that door locks are analogous to window coverings.

Second and perhaps not surprisingly given their disparate fields, no suggestion exists to combine Buccola with van Dinteren et al. Nowhere does Buccola suggest using its principles in anything other than locking mechanisms, much less does Buccola suggest using any of its disclosure with window covering operating systems. Van Dinteren et al. nowhere suggests using more than one signal in the first place, so why one would be motivated on the basis of van Dinteren et al. to incorporate, in some unknowable fashion,

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the locking system of Buccola, much less the particular part of it being relied on in the rejection, is a mystery.

Furthermore, the examiner, quite understandably, ventures no attempt to comply with the requirement of MPEP §2143 to explain why a reasonable expectation of success exists in combining a door lock circuit with a window covering operating circuit. How would van Dinteren et al., precisely, be modified to incorporate a door lock circuit? Would the entire circuit of van Dinteren et al. have to be removed and replaced by the door lock circuit of Buccola, thus enabling van Dinteren et al. certainly capable of unlocking a door but not perhaps moving a window covering? If not, and only the relied-upon part of Buccola used in van Dinteren et al., where and how would this unsuggested portion be dropped into the circuit of van Dinteren et al.? Without understanding quite how Buccola could be incorporated into van Dinteren et al., how can a reasonable expectation of success be shown in compliance with the MPEP?

The problem with making a prima facie case is further complicated by the fact that the relied-upon teaching of Buccola is sparse indeed. All it states is that two detectors can be provided for receiving respective frequencies, one of which "wakes up" the microprocessor. But nowhere does Buccola teach what generates the frequencies, or how the wake up frequency "prepares" the microprocessor for operation, or even that the microprocessor is deenergized until receipt of the wake up frequency. Given this bare hint at how the wake up feature functions in the intended environment of Buccola, it is no wonder that the requisite prior art suggestion is completely absent of just how the opaque teaching of Buccola could be transferred into a completely un contemplated window covering system.

In previous Answers contentions have been made that the two references can be physically incorporated together because all the examiner proposes doing is substituting the transmitting and receiving

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system of Buccola for that of van Dinteren. But this entirely misses the point that no explanation has been offered of how, precisely, van Dinteren et al. would be modified to incorporate a door lock circuit, as is otherwise required by MPEP §2143. If only the relied-upon transceiver system of Buccola is used in van Dinteren et al., where and how would this unsuggested portion be dropped into the circuit of van Dinteren et al., and why would there be a reasonable expectation of success that a door lock transceiver would work in a window blind system? The requirement of the MPEP to explain the reasonable expectation of success of a proposed modification has not been acknowledged much less fulfilled.

Prior Answers have also observed that only one signal has been claimed, but all independent claims require a first signal (a wake-up signal) having a first frequency and a second signal (a data signal) having a second frequency different than the first frequency.

Previous Answers have also argued that Buccola is analogous art because the problem to which the present invention is directed is "conserving power", but no claim is directed to "conserving power" in a vacuum, but rather to a specific technical field - motorized window coverings. Not door locks. Otherwise, there would be no principled reason to deny that power conservation references in areas such as spaceship design and penile implants (both of which assuredly require battery power conservation) would also be analogous to the present window covering claims. Statements to the contrary - that one would have been motivated to "look to power conserving devices in general, not merely within the blind art" - are mere conclusions that are unsupported by any prior art evidence such as, e.g., a finding as to the level of skill in the art, much less why that level of skill would motivate the window blind artisan to look to the door lock art, MPEP §2143.

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While the above defects in the rejection apply to all claims, consider that certain particular claims would not result from the proposed combination of references however improper the combination may be. For example, it appears from the portion of col. 4 of Buccola relied on in the last Office Action that the only thing getting awakened is the microprocessor, with the series of amplifiers mentioned in the Office Action evidently always being energized. In marked contrast, Claim 7 explicitly requires deactivating a data signal amplifier, activating a wake-up signal amplifier, and then re-activating the data signal amplifier to process a data signal to move the window covering *only* in response to a wake-up signal being received by the wake-up signal amplifier. This amplifier operation simply does not occur in Buccola, nor is any amplifier operation mentioned in the rejection, which is focussed only on allegations regarding a wake up signal and a data signal and not on what those signals accomplish. It appears that the examiner has in effect examined only Claim 1. In fact, reviewing the present prosecution, the explicit limitations of amplifier operation of Claim 7 have never been addressed, not in any Office Actions and not in either of the two Answers that were produced by appeals conferences composed of supposedly experienced examiners who nonetheless appear to have allowed Claims 2-20 to escape their combined attention. Similar comments apply to dependent Claims 4, 5, and 13.

But why stop there? Never has any mention been made of the limitations of Claims 6, 9, and 15 (if a data signal is not received within a predetermined time period, deactivating the data signal amplifier.) Pursuing the line of reasoning that every claim rejected ought really to have been noticed first, and then reasons for its unpatentability specifically identified, how about Claim 19 (battery is an alkaline or Lithium battery) or Claim 20 (battery is the sole source of power for the motor)? Those limitations have never been mentioned in any Office Action or Examiner's Answer much less shown to have been taught or suggested

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in the prior art. And here we are, three and one-half years after this application was filed, on the third appeal brief.

Appellant would like to illuminate what would be the unacceptability at this late stage, after two appeals conferences have already been held, of attempting to remedy the above shortcomings by a reopening of prosecution. Appellant plainly has been forced to expend considerable resources and has not gotten its money's worth, and short-circuiting the appellate process at this stage to address claims that should have been addressed in the very first Office Action would be highly objectionable. Should the examiner not indicate allowance of these claims and instead reject them on the merits, in all fairness he should do so by means of issuing a new ground of rejection in his Answer, so that at the very least this issue is brought to the attention of the Group Director, who must approve of new grounds of rejection in Answers under the new appellate rules.

Respectfully submitted,



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APPENDIX A- CLAIMS

1. A motorized window covering, comprising:
a remote control unit;
a transmitter within the remote control unit;
an actuator coupled to the window covering;
a receiver within the actuator, the receiver receiving at least one signal from the transmitter;
a wake-up signal amplifier electrically connected to the receiver for receiving a wake-up signal having a first frequency; and
a data signal amplifier electrically connected to the receiver for receiving a data signal having a second frequency different than the first frequency, the data signal carrying information for moving the window covering.
2. The motorized window covering of Claim 1, wherein at least one wake-up signal is transmittable by the transmitter and receivable by the receiver.
3. The motorized window covering of Claim 2, wherein at least one data signal is transmittable by the transmitter and receivable by the receiver.
4. The motorized window covering of Claim 3, wherein the wake-up signal amplifier is energized continuously.
5. The motorized window covering of Claim 4, wherein the data-signal amplifier is de-energized until the wake up signal is received at the receiver.
6. The motorized window covering of Claim 5, wherein the data-signal amplifier is de-energized if the data signal is not received at the receiver within a predetermined time period.
7. A method for controlling a motorized window covering, comprising the acts of:
deactivating a data signal amplifier;
activating a wake-up signal amplifier; and
activating the data signal amplifier to process a data signal to move the window covering only in response to a wake-up signal being received by the wake-up signal amplifier, the wake up signal having a first frequency and the data signal having a second frequency different from the first frequency.
8. The method of Claim 7, further comprising the act of:
when a data signal is received at the data signal amplifier, operating the motorized window covering in response thereto.

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9. The method of Claim 8, further comprising the act of:
if a data signal is not received within a predetermined time period, deactivating the data signal amplifier.
10. The method of Claim 7, wherein the wake-up signal is generated by a remote control unit.
11. The method of Claim 8, wherein the data signal is generated by a remote control unit.
12. A system for controlling a motorized window covering, comprising:
an actuator mechanically coupled to an operator of the window covering;
a receiver within the actuator;
a wake-up signal amplifier electrically connected to the receiver for receiving a wake-up signal having a first frequency;
a data signal amplifier electrically connected to the receiver for receiving a data signal having a second frequency different than the first frequency, the data signal carrying information for moving the window covering; and
a processor within the actuator, the processor including a program for controlling the actuator in response to at least one data signal.
13. The system of Claim 12, wherein the program includes:
means for deactivating a data signal amplifier;
means for activating a wake-up signal amplifier; and
means for activating the data signal amplifier only in response to a wake-up signal being received by the wake-up signal amplifier.
14. The system of Claim 13, wherein the program further includes:
means for operating the motorized window covering in response to the data signal being received by the receiver.
15. The system of Claim 14, wherein the program further includes:
means for deactivating the data signal amplifier if a data signal is not received within a predetermined time period.
16. The system of Claim 12, further comprising:
means for generating the wake-up signal.
17. The system of Claim 12, further comprising:
means for generating the data signal.
18. The system of Claim 12, further comprising a head rail supporting a motor of the actuator and holding at least one battery electrically connected to the motor.

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19. The system of Claim 18, wherein the at least one battery is an alkaline or Lithium battery.
20. The system of Claim 18, wherein the at least one battery is the sole source of power for the motor.

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APPENDIX B - EVIDENCE

None (this sheet made necessary by 69 Fed. Reg. 155 (August 2004), page 49978.)

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APPENDIX C - RELATED PROCEEDINGS

None (this sheet made necessary by 69 Fed. Reg. 155 (August 2004), page 49978.)

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